

VERNE G. LONG

IBLA 81-669

Decided August 28, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring mining claim abandoned and void. I MC 22267.

Dismissed.

1. Practice Before the Department: Persons Qualified to Practice

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

3. Mining Claims: Assessment Work: Filing of Evidence of

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Rich Reed, P.G., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Verne G. Long has appealed from the April 30, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the National mining claim abandoned and void, because evidence of assessment work or notice of intention to hold the claim was not filed before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). I MC 22267. 1/

[1] At the outset, we wish to note that appellant does not represent himself in this appeal. He is represented by "Rich Reed, P.G." Departmental regulation 43 CFR 1.3 defines who may practice before the Department. 2/ Reed has made no showing that he is qualified under this regulation. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department is subject to dismissal. W. Duane Kennedy, 24 IBLA 152 (1976); Pierce and Dehlinger, 22 IBLA 396 (1975); see also United States v. Gayanich, 36 IBLA 111 (1978). The purpose of this regulation is not to penalize appellants, but rather to protect them against the risk of inadequate representation by persons untrained in the law. The appeal is therefore dismissed.

1/ The decision actually stated that the claim was declared abandoned and void because of a failure to file the necessary document "by December 30, 1979." This was incorrect. For a claim located prior to Oct. 21, 1976 (here the claim was located in 1939), evidence of assessment work or a notice of intention to hold should have been filed on or before Oct. 22, 1979. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(2).

2/ That regulation provides:

"(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

"(b) Unless disqualified under the provisions of § 1.4 or by disciplinary action taken pursuant to § 1.6:

"(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963, shall be permitted to practice before the Department.

"(2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands will be permitted to practice without filing an application for such privilege.

"(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, decedent's estate, or a trust or

[2, 3] Were we to consider this appeal on its merits, we would affirm the decision below. Reed's statement on behalf of appellant admits that assessment work for 1979 was not filed with BLM, although it was filed in the proper county. Under section 314 of FLPMA, supra, the owner of a mining claim located before October 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of performance of annual assessment work on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Filing a notice of assessment work with the proper county does not satisfy the requirement of filing the document with BLM. Walter D. Cosdon, 56 IBLA 112 (1981). Although it is alleged that BLM accepted and recorded appellant's 1980 assessment, such action would not obviate the consequences of his failure to file by October 22, 1979. Unfortunately, neither actual performance of assessment work annually nor the fact that the owner has been working the property in good faith provides any basis for affording appellant relief from the statutory consequences. See Lynn Keith, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

fn. 2 (continued)

estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter."

